



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

## DEPARTMENT OF NATURAL RESOURCES

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April 4, 2013

Mr. Brian Treece, Chairman  
Columbia Historic Preservation Commission  
P.O. Box 6015  
Columbia, MO 65205-6015

Dear Mr. Treece:

Thank you for your letter of April 3, 2013 requesting clarification of the Section 106 review of the City of Columbia's Providence Road Improvement Project. Listed below are our responses to the questions you posed in your letter.

*1.0 What is the current determination of the Missouri Department of Natural Resources—State Historic Preservation Office regarding the Providence Road Project (014-BO-13)?*

We have advised both the City and the federal agency, Federal Highways Administration (FHWA) that we have rescinded our finding of "no historic properties" because of concerns expressed by the Columbia Historic Preservation Commission and by other members of the public about the overall scope of the project. The City has not, to date, provided us with that additional information so the current status of the project is that the Section 106 review of this project is on hold, pending additional information regarding the overall scope of the entire project and on the additional properties that might be impacted by the undertaking.

*2.0 Based on this determination and your division's communications with the Missouri Department of Transportation (MoDOT) and the FHWA, is funding by the FHWA through MoDOT currently approved for this project.*

That question should properly be directed to FHWA since they are the federal funding entity. It is our understanding that MoDOT will comply with whatever direction they receive from FHWA. While we cannot address the issue of whether the project is currently approved, we can state that the Section 106 process for this project is not complete.

*3.0 In our opinion, did the City of Columbia Public Works application for Section 106 Review meet the "level of effort" required to include adequate documentation necessary to make a determination of "no historic properties?"*

It is here that the issue of segmentation comes into play. Segmentation is discussed in greater detail in response to question 8. Based on the project as described in the City's initial submittal, the application was minimally adequate. Based on a more complete understanding of the scope of the entire project, however, the application did not provide adequate information to fully assess the complete undertaking. We would stress that the determination as to whether the two phases of the project are, in fact, a linked undertaking rests with the federal funding agency (FHWA).

*4.0 What would have been the appropriate process for the City of Columbia's Public Works Department to use to identify potential historic properties in its application for Section 106 review?*



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Please note that we make no distinction between various branches of city government. It is our assumption that an application submitted by the City of Columbia reflects the opinions of the elected officials and staff of the City. Obviously the more information fully and completely describing a project and the resources impacted by the undertaking that is submitted to the State Historic Preservation Office (SHPO) as part of its 106 submittal, the easier it is for us to make an accurate determination of eligibility and effect.

As a Certified Local Government (CLG), the City of Columbia should have obtained the input of their local historic preservation commission which could have provided additional insight into the resources potentially impacted by the undertaking. This is particularly the case in this situation when such concerns were expressed by the Commission at a meeting with other City officials in November well in advance of the City's submittal. It is our expectation that projects submitted by CLG's have fully utilized the talents and expertise of their local commissions to ensure that a full, accurate and complete assessment of historic resources is included in their 106 submittals.

*5.0 In your opinion, does this proposed project include the possible presence of historic properties?*

We will withhold making that formal determination until we have a full submittal of information by the City on the overall scope of the entire project and the resources potentially impacted by the undertaking. At the time of the City's initial submittal, to the best of our knowledge, the Grasslands had never been formally surveyed or identified in an overall city survey plan as being a potential historic district. No additional information on these properties and their historic potential was supplied to SHPO prior to our initial review by either the Public Works Department or the Historic Preservation Commission.

*6.0 Based on your preliminary review of information provided by the Historic Preservation Commission's consultant Deb Sheals, could any of these properties be considered eligible for or contributing structures to an application for the National Register of Historic Places?*

While we withhold making a formal determination until we have a full submittal of information by the City, based on the information provided to our office yesterday, it does appear that there may be resources that are potentially eligible for inclusion in the Register. A more complete review of the information will be required to determine if there are concerns about the boundaries of a potential district and about the overall integrity of such a district.

*7.0 Your letter dated February 7, 2013 to the City of Columbia Public Works Department references a telephone conversation of February 1, 2013 with Rick Kaufmann. Please provide a written narrative of that conversation with Rick Kaufmann.*

The letter of February 7, 2013 is a written summary of the telephone conversation between Judith Deel and Mr. Kaufmann.

*8.0 Would submitting a 106 review for only Phase 1, when the two projects are clearly linked by city planners, be considered an improper "segmentation" by MoDOT and the FHWA? Is "segmentation" an acceptable practice when completing these types of federally-funded projects?*

While the City in all likelihood felt that submitting a Section 106 application for only the portion of the project utilizing federal funds was the correct course of action, our office is concerned that this may constitute segmentation. The actual determination as to whether or not segmentation took place, however, rests with FHWA as the federal funding agency.

Keep in mind that segmentation is not specifically addressed in the Section 106 regulations; however the concept is supported by case law. Federal case law related to Section 106 compliance has supported the interpretation that if a portion of a contiguous project is carried out with federal funds/assistance, the entire project is considered a federal project. Portions of a project cannot be withdrawn from Section 106 review if they are serving a unified end. For example:

A road that is being built from Point A to Point B with federal dollars cannot extract or exclude Section X in the middle of the road from Section 106 review even if Section X is being undertaken with local funds, the argument being that Section X would not be built were it not for the project between Point A and Point B. They are serving a unified end.

Similarly, suppose a community wants to build a conference center with local funds, but the site they have chosen would require that the FHWA construct a highway off-ramp in order to access the new site. The new conference center, regardless of the resources used to construct it, would be subject to Section 106 review because its very existence depends upon the highway off-ramp. They are serving a unified end.

*9.0 "If any of these properties meet the National Register criteria and a finding of adverse impact to historic properties is determined, what is the documentation of effort required under 36 CFR 800.4(f)."*

There may be a typo here, as there is no (f) under 800.4, Identification of Historic Properties. Assessment of Adverse Effect is 800.5, and Resolution of Adverse Effect is 800.6.

In the event that NR properties are identified, and an adverse effect may result, the agency, as outlined in 800.5, will consider the views provided by consulting parties on the possible adverse effect, and, in consultation, will consider alternatives or modifications to the proposed project that could avoid, minimize or mitigate the effects to historic properties. Adequate documentation provided to the consulting parties should include complete information on the historic properties, and on the project alternatives considered.

If it is determined by the agency in consultation with the consulting parties that the adverse effect cannot be avoided or minimized, the agency must notify the Advisory Council on Historic Preservation (ACHP) of the adverse effect. Documentation provided to the ACHP should include a full and complete description of the project (what the project is, and why it is needed), of the efforts to identify historic properties (survey and evaluation), of the alternatives considered to avoid the adverse effect, and the views of the consulting parties and of the interested public, and, as appropriate, of federally recognized Native American Tribes. The ACHP has 15 days to respond.

Mitigation for an adverse effect to historic properties is agreed to in a legally binding Memorandum of Agreement (MOA) or Programmatic Agreement (PA). The MOA and its stipulations are developed in consultation with the SHPO and the other consulting parties, and may include recordation of buildings to be demolished, historic architectural survey, preparation of nominations to the National Register of Historic Places, education and outreach, and/or other measures as agreed to and as may be appropriate.

I hope the information provided above adequately addresses the concerns raised in your letter. Should you have any additional questions, please feel free to call me at 573-751-7858 and thank you for your interest in the preservation of Missouri's heritage.

Sincerely,

STATE HISTORIC PRESERVATION OFFICE



Mark A. Miles  
Director and Deputy  
State Historic Preservation Officer

- c. Mike Matthes, Manager, City of Columbia  
Rick Kaufmann, PE, City of Columbia Public Works Department  
Reagan Ball, FHWA  
Michael Meinkoth, MoDOT



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February 7, 2013

Rick Kaufmann, P.E.  
Public Works Department  
P.O. Box 6015  
Columbia, Missouri 65205-6015

Re: Providence Road, Stadium Blvd to Steward Road, Columbia (FHWA) Boone County, Missouri

Dear Mr. Kaufmann:

Thank you for submitting information on the above referenced project for our review pursuant to Section 106 of the National Historic Preservation Act (P.O. 89-665, as amended) and the Advisory Council on Historic Preservation's regulation 36 CFR Part 800, which require identification and evaluation of cultural resources.

As was discussed with your telephone conversation of February 1, 2013 with Judith Deel of my staff, concerns have been raised by the Columbia Historic Preservation Commission and by other members of the public concerning the possible effects on historic properties of the above referenced project. Specifically, a possible Phase II of the Providence Road project may propose demolition of six (6) additional buildings. In an e-mail to this office, the Commission states that "Seven of these eight homes are approximately 80 years old and potentially have significant historic significance to the City of Columbia and the University of Missouri".

We do understand that only the Phase I of this project has been funded by the Federal Highway Administration (FHWA). However, because of the possible presence of historic properties, the SHPO and the FHWA may need to request additional information relative to the total of eight (8) buildings affected by both Phase I and Phase II, and may request consideration of additional alternatives for all phases of the project.

If you have any questions, please write Judith Deel at State Historic Preservation Office, P.O. Box 176, Jefferson City, Missouri 65102 or call 573/751-7862. Please be sure to include the SHPO Log Number **(014-BO-13)** on all future correspondence or inquiries relating to this project.

Sincerely,

STATE HISTORIC PRESERVATION OFFICE

Mark A. Miles  
Director and Deputy  
State Historic Preservation Officer

MAM:jd

c Raegan Ball, FHWA  
David Morris, FHWA  
Michael Meinkoth, MoDOT  
Toni Prawl, MoDOT